



Council Communication

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: TIMOTHY J. DORN, CHIEF OF POLICE (480)635-7272

THROUGH: MARC SKOCYPEC, DEPUTY TOWN MANAGER (6867)

MEETING DATE: SEPTEMBER 20, 2012

SUBJECT: INTERGOVERNMENTAL AGREEMENT: CONTRACT WITH THE CITY OF MESA FOR CRIMES SCENE AND SPECIFIED LABORATORY SERVICES (#2013-3001-0088).

STRATEGIC INITIATIVE: Community Livability

This recommendation will comply with the above strategic initiative by improving on-scene processing efficiencies and the overall quality and efficiency of criminal investigations, and prosecution of criminals.

LEGAL REVIEW

☒ Complete

☐ N/A

FINANCIAL REVIEW

☒ Complete

☐ N/A

RECOMMENDED MOTION

A MOTION TO APPROVE AN INTERGOVERNMENTAL AGREEMENT: CRIME SCENE SERVICES AND SPECIFIED LABORATORY SERVICES AGREEMENT BETWEEN THE CITY OF MESA AND THE TOWN OF GILBERT (#2013-3001-0088); AND AUTHORIZE THE MAYOR TO EXECUTE THE REQUIRED DOCUMENTS.

BACKGROUND/DISCUSSION

Prior to June 30, 2012 the Gilbert Police Department (GPD) contracted crime scene specialist (technician) services and minimal specified forensic/crime lab services with the Chandler Police Department (CPD). The minimal forensic/crime lab services were DUI (Driving Under Influence) alcohol evidence blood testing and marijuana substance testing. However, due to staffing issues, the CPD had to reduce services (marijuana substance testing) and required an increase in funding of \$40,880 from the GPD to enter into contract for the same services the following (12/13) fiscal year. Considering

this increase in cost for very limited service, and the fact there were already significant efficiency issues with the State of Arizona Department of Public Safety Lab, Staff determined it was best to look to another forensic/crime lab for efficiency improvements.

Ultimately, the GPD engaged in partnership discussions with the Mesa Police Department (MPD) for forensic/crime lab services. There was mutual interest and considering the fact that the City of Mesa shares the largest section of Gilbert's borders, there was additional interest due to the fact criminals cross between the cities' borders often to commit their crimes and a shared lab would likely solve cases in both cities; based upon the leveraging of resources and evidence.

Mesa and Town of Gilbert Staff agreed to the following services:

1. Crime scene specialist services would be provided by the MPD mirroring the same specific crimes situations as contracted previously with Chandler, but at 45% the previous cost.
2. The contracted lab services would be expanded and improved to include blood alcohol evidence testing for DUI alcohol investigations, all drug substance testing, DNA testing for persons and property crimes, and DUI drug investigation evidence testing. The IGA provides for more efficient lab analysis return times and as such it provides for significant improvement from current conditions. Increased cost would be required to fund the additional services but Staff agreed it was a good investment considering the high expected return, especially with the significantly reduced turnaround times for DNA evidence on property crimes cases. The GPD and Town of Gilbert Budget Office included this project into the budget for FY 12/13, which was approved by Council. Now the GPD requests to formally partner with the MPD Lab via the intergovernmental agreement.

The Contract was reviewed for form by Attorney Kelly Schwab.

FINANCIAL IMPACT

The total cost for services is \$552,794, which was already approved and included in the current FY13 budget. The financial impact was reviewed by Laura Lorenzen, Budget Analyst.

STAFF RECOMMENDATION

Staff recommends approval of the Intergovernmental Agreement #2013-3001-0088 between the City of Mesa and the Town of Gilbert for crime scene services and laboratory services.

Respectfully submitted,

Timothy J. Dorn
Chief of Police

Attachments and Enclosures:

IGA

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE CITY OF MESA AND THE TOWN OF GILBERT
FOR CRIME SCENE SERVICES AND LABORATORY SERVICES**

This Intergovernmental Agreement (IGA or Agreement) is made and entered into between the City of Mesa (Mesa), an Arizona municipal corporation, and the Town of Gilbert (Gilbert), an Arizona municipal corporation, collectively referred to as the Parties.

For reference purposes, this Agreement is dated _____.

RECITALS

WHEREAS, the Parties are authorized to enter into this Agreement pursuant to Arizona Revised Statute (ARS) § 11-951 *et seq.*, ARS § 13-3872 and the respective provisions of their City or Town Charters or other governing authority; and

WHEREAS, GILBERT requires major crime scene services and specified forensic services to further their law enforcement mission; and

WHEREAS, the Mesa Police Department has a dedicated Forensic Services facility and staff which processes evidence related to criminal investigations. Mesa is recognized locally and nationally as a model in the application of Forensic Services in law enforcement; and

WHEREAS, Mesa desires to provide the services required by Gilbert; and

WHEREAS, Gilbert will provide financial compensation for major crime scene and specified forensic services.

In consideration of the mutual covenants and promises contained in this Agreement and other good and valuable consideration, the Parties agree as follows:

TERMS

This Agreement shall be effective upon approval of the governing body or authority of the Parties in conformance with ARS § 11-951, *et seq.*, with provision of an original copy of the authorizing document to the Mesa Police Department.

This Agreement shall remain in effect until July 1, 2017 unless otherwise terminated by the terms of this Agreement or by law.

This Agreement may be administratively extended by the Parties at the direction of the chief law enforcement officer for each Party on or before the termination date for a period of an additional five (5) years by mutual consent, confirmed in writing.

Either Party shall have the right to terminate this Agreement upon twelve (12) months written notice. The Parties agree to consult prior to the date of termination to ensure termination on the most economical and equitable terms.

RECORDS

The Parties agree to maintain and furnish to each other records and documents pertaining to the services provided under this Agreement as may be required by Federal State and local laws, rules and regulations.

Gilbert may request an audit related to the services provided under this Agreement with thirty (30) days written notice to Mesa. If the audit indicates that fees or billable items have been charged incorrectly, the appropriate corrections and adjustments will be made.

Mesa shall preserve all records related to the services provided under this Agreement for the time period set forth in its statutory retention schedule. The parties acknowledge that all records related to this Agreement may be subject to disclosure pursuant to State law in response to a public records request or to a subpoena or other judicial process.

SERVICES

Mesa, through its Police Department, shall provide major crime scene services and specified forensic services to Gilbert.

Crime Scene Services include sending a crime scene specialist to major scenes to include:

- Homicide
- Officer Involved Shootings
- Aggravated Assault involving life threatening injury
- Armed Robbery
- Fatal traffic accidents
- Life threatening traffic accidents
- Sexual Assault
- Other serious or high profile cases as requested by the Gilbert Command Staff

Gilbert will be subject to the established Mesa priorities in sending crime scene specialists to major scenes.

Forensic services include Toxicology analysis on blood alcohol and blood drugs, full service Controlled Substance screening, and Biology DNA analysis.

Gilbert will be subject to Mesa Police Department standard operating procedures for analyzing priorities in forensic laboratory services.

Gilbert will be subject to Mesa Police Department standard operating procedures for evidence preservation and processing at the scenes of incidents consistent with Mesa Police Department Administrative Order 1870, Processing Evidence at Incident Scenes.

REPORTS

Any reports, generated pertaining to services rendered under this Agreement, will be subject to Mesa Police Department standard operating procedures and Arizona's public records law.

REIMBURSEMENT AND COST

Gilbert will provide funding to Mesa in exchange for major crime scene and specified forensic laboratory services.

Gilbert will provide funding of \$552,794 for the Fiscal Year 2012/13. These costs represent the entire financial obligation of Gilbert for the Fiscal Year 2012/13 based on the services herein. If the level of service provided changes, the Parties may renegotiate Gilbert's financial obligation.

Funding for subsequent years will be determined each April following review and evaluation of workload and associated costs of services. Such funding will be set forth as a written amendment to this Agreement.

At any time, Mesa or Gilbert may evaluate the services provided under this Agreement and make any and all financial adjustments necessary based on demand for services. Any such financial adjustments shall be set forth as an amendment to this Agreement.

PAYMENT

Mesa will invoice Gilbert for major crime scene and specified forensic laboratory services on July 1st of each year.

AMENDMENT

This Agreement contains the entire understanding between the Parties. Any changes to this Agreement must be in writing and with the mutual written consent of authorizing representatives for the Parties.

INSURANCE

The parties agree to secure and maintain insurance coverage for any and all risks that may arise out of the terms, obligations, operations, and actions as set forth in this Agreement including, but not limited to, public entity insurance. The acquisition of insurance or the maintenance and operation of a self-insured program may fulfill this insurance requirement; provided, however, that the unencumbered reserves available under any such self-insurance program shall be equal to or greater than the required

minimum coverage amounts of Three Million Dollars. The parties to this Agreement shall exchange certificates of insurance or self-insurance.

INDEMNIFICATION

To the extent permitted by law, Mesa and Gilbert shall indemnify, defend and hold harmless each other, each other's officers, employees, contractees and agents from and against any and all suits, actions, legal or administrative proceedings, claims, demands or damages of any kind or nature relating to this Agreement which are the result of any intentional or negligent act or omission of the indemnitor or indemnitor's officers, employees, contractees, agents and anyone acting under its direction or control.

COMPLIANCE WITH E-VERIFY

A. To the extent provisions of ARS § 41-4401 are applicable, all Parties warrant to each Party that they will comply with all Federal Immigration laws and regulations that relate to their employees and that each now complies with the E-Verify Program under ARS § 23-214(A).

B. A breach of this warranty will be considered a material breach of this Agreement and may subject the breaching party to penalties up to and including termination of this Agreement.

C. All of the Parties retain the legal right to inspect the papers of any employee who works pursuant to this Agreement or any related subcontract to ensure compliance with the warranty given above.

D. Any Party may conduct a random verification of the employment records of any other Party to ensure compliance with this warranty.

E. A Party will not be considered in material breach of this Agreement if it establishes that it has complied with the employment verification provisions prescribed by 8 USCA § 1324(a) and (b) of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by ARS § 23-214(A).

F. The provisions of this Article must be included in any contract either Party enters into with any and all of its contractors or subcontractors who provide services under this Agreement.

NONDISCRIMINATION

The Parties to this Agreement shall comply with all applicable provisions of state and federal non-discrimination laws and regulations including, but not limited to, Executive Order 75-5, as modified by Executive Order 99-4, which mandates that all persons, regardless of race, religion, sex, age, national origin or political affiliation shall have equal access to employment opportunities and all other federal and state employment and educational opportunity laws, rules and regulations, including the Americans with

Disabilities Act; provided, however, an Indian Community is subject to 25 USC § 450e(c). No Party shall engage in any form of illegal discrimination.

PROHIBITION OF DOING BUSINESS WITH SUDAN AND IRAN

Under ARS §§ 35-391.06 and 35-393.06, the Parties certify that they do not have scrutinized business operations in either Sudan or Iran.

CONFLICT OF INTEREST

Pursuant to ARS § 38-511, the state, its political subdivisions, or any department or agency of either, may cancel this contract within three (3) years after its execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the state, its political subdivisions, or any of the departments or agencies of either is, at any time while the contract or any extension of contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract. Cancellation of the agreement shall be effective upon written notice as provided in ARS § 38-511.

EMPLOYMENT

This Agreement does not create an employee/employer relationship between Mesa personnel assigned to crime scene services and forensic laboratory services and Gilbert.

Pursuant to ARS § 23-1022, for the purposes of worker's compensation coverage, all employees of each Party covered by this Agreement shall be deemed employees of Mesa and subject to Mesa's Management Policies, Personnel Rules, Orders, Memorandums, etc. As such, Mesa is liable for payment of worker's compensation benefits.

COURT APPEARANCES

If a criminalist is scheduled for simultaneous court appearances on City of Mesa and Town of Gilbert cases, the older case will take precedence. In any event, the criminalist will notify the court with the newer case of the conflict.

OTHER PROVISIONS

A. In the event that any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not affect the validity or enforceability of any other provision hereof.

B. This Agreement contains the entire understanding between the Parties with respect to the subjects hereof and supersedes all prior negotiations and agreements. This Agreement may be amended only by an instrument in writing and signed by all the participating Parties. The waiver of any breach of this Agreement shall not be deemed

to amend this Agreement and shall not constitute waiver of any other subsequent breach. Headings are for convenience and shall not affect interpretation.

C. Upon execution, this Agreement shall be recorded with the appropriate City or Town Clerk and a copy shall be forwarded to each Party.

D. Nothing within this Agreement shall be construed to limit the ability of Mesa or Gilbert to provide, or as otherwise allowed for by law, such assistance in any enforcement action as may be lawfully requested by a law enforcement officer having jurisdiction over an incident, crime or matter under consideration.

E. This Agreement shall be interpreted in accordance with Arizona law.

NOTICE

All notices, requests for payment, or other correspondence between the Parties regarding this Agreement shall be mailed or delivered to the respective Parties at the following addresses:

Timothy J. Dorn
Police Chief
Town of Gilbert
75 East Civic Center Drive
Gilbert, Arizona 85296

Frank L. Milstead
Police Chief
Mesa Police Department
Post Office Box 1466
Mesa, Arizona 85211

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT on the date written below.

Town of Gilbert

City of Mesa

This ____ day of _____, 2012

this ____ day of _____, 2012

By: _____

John W. Lewis
Mayor
Town of Gilbert

By: _____

Christopher J. Brady
City Manager
City of Mesa

ATTEST:

ATTEST:

Town Clerk
Town of Gilbert

City Clerk
City of Mesa

Copies of appropriate action by ordinance, resolution, or otherwise authorizing the respective parties to enter into this Agreement are attached hereto.

INTERGOVERNMENTAL AGREEMENT DETERMINATION

In accordance with ARS § 11-952, this contract has been reviewed by the undersigned who have determined that this contract is in appropriate form and within the powers and authority granted to each respective public body.

This ____ day of _____, 201__

This ____ day of _____, 201__

By: _____

Town Attorney
Town of Gilbert

By: _____

Jacqueline Jeffery
Assistant City Attorney
City of Mesa

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